

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN. (CONTEMPT PETITION) No 423 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5: No

NIRMALA H KOSHTI

Versus

PRESIDENT

Appearance:

MR NIRAV K. MAJMUDAR for Petitioner
MR JV MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 14/06/1999

ORAL JUDGEMENT (per R. Balia, J.)

The applicant has moved this application for
punishing the respondents for the contempt alleged to
have been committed by them in respect of the order

passed by the Primary Education Tribunal dated 28.2.1990. The application was filed on 5.4.90 and notices were issued on 16.4.90.

2. Relevant facts for the present purposes are that the the applicant was serving as a primary school teacher in the pay-scale of Rs. 1200-2040. On 23.6.96 her services were terminated by her employer, Bharat Primary School. The matter being taken to the Gujarat Primary Education Tribunal vide Application No. 106/88, the tribunal found termination of her services to be illegal and it directed reinstatement of the applicant within 10 days of the date of order with full back wages and continuity of service. The tribunal further directed to make payment of future salaries in the said pay-scale on 10th day of each succeeding month. The applicant complained that the respondents did not reinstate her notwithstanding that she presented herself at the school on 9.3.90 and 12.3.90 and 14.3.90. Notice was also given on 16.3.90 but to no avail.

3. Reply affidavit dt. 17.12.97 has been filed that the applicant had come to the school premises on 9.3.90, 12.3.90 and 14.3.90 in the company of head strong persons and was shouting from the outside of the school and was using bad language and was doing bad behaviour against the school and was shouting slogans. Due to the said behaviour the school management forwarded letter dated 9.3.90, 12.3.90 and 14.3.90 to the petitioner and to the Administrative Officer of Nagar Prathmik Shiksan Samiti of Ahmedabad. It is in these circumstances the applicant could not be allowed in the premises. It was further stated in the reply affidavit that the applicant is working in another school since 1990 until the date of filing of the reply affidavit and is drawing full salary from that school. Therefore, she is not entitled to claim anything against the respondents. To ward off the allegation of wilful disobedience, the respondents also pleaded financial stringency as the ground for its inability in making the payment or complying with the directions of the tribunal. A preliminary objection was also raised that the order in question is an executable order and the applicant ought to have resorted to execution proceedings and not invoke contempt jurisdiction of this Court as a substitute for execution of the order of the tribunal. In this connection, reliance was placed on a Bench decision of this Court in *Girishchandra R. Bhatt & Anr. v. Dineshbhai N. Sanghvi, Principal, Sanghvi Primary School & Ors.*, 1996(1) GLR 812.

4. From the order of this Court dated 10.3.99 passed in Civil Application No. 1620/99 in M.C.A. No. 423/90 with M.C.A. (Contempt Petition) No. 423/90, we find that during the course of hearing of these proceedings an amount of Rs. 1,00,600/- has been deposited by the respondent school management as the amount that remains payable towards salaries for the period from July 1, 1986 to October 1, 1991, about which computation there is no dispute. Out of this sum Rs. 25,000/- had been paid to the applicant in pursuance of the orders of the court dt. 10.3.99.

5. A rejoinder affidavit has been filed by the applicant. Statement of applicant was also recorded by the Court on 11.3.98. Reading of the rejoinder affidavit and statement of applicant further shows that there is no dispute between the parties that the applicant is working at Shishu Sanskar Prathmik Shala since year 1991 and she was engaged in the pay-scale of Rs. 1200-2040. One fact that may be noticed in this connection here is that in response to respondents' reply that the petitioner is employed in the aforesaid school since 1990, the petitioner in rejoinder affidavit has accepted that she has accepted job as Part-time Assistant Teacher in Shishu Sanskar Primary School and that she was getting a lumpsum amount of Rs. 500 per month. In her statement recorded before this Court on 11.3.98 she has stated that her pay-scale at Shishu Sanskar Primary School which she joined in 1991 was Rs. 1200-2040 and she passes on receipt for such salary. She stated before this Court on 11.3.98 that she resigned from the school on 23.12.94, no foundation of this resignation was laid in the rejoinder affidavit which was sworn on 19.12.97 and she has tried to explain appointment in the pay-scale of Rs. 1200-2040 by her present employer by alleging that she used to pay amount in excess of Rs. 500 back to the management. She further accepts in her statement that her mother is a pensioner and she is getting an approximate amount of Rs. 1800 per month by way of pension.

6. In the aforesaid circumstances it is very clear that on passing of the award dated 28.2.90 the respondents became liable to pay back wages with effect from 23.6.86 until the date of award as full back wages and were liable to pay monthly salary in the pay-scale of Rs. 1200-2040 on 10th day of every succeeding month and since Nov. 91 the applicant has taken a job with Shishu Sanskar Prathmik Shala. The only contention is about the actual amount of salary she is drawing therefrom. The admitted position is that she was employed there and was drawing at least Rs. 500 per month.

7. In aforesaid background at best applicant's right to be continued in employment since Nov. 91 when she took another employment in pay-scale of Rs. 1200-2040, can be said to be a bona fide dispute that may require independent determination. It can legitimately be contended by respondents that since she has voluntarily opted out of service and she is not entitled to any salary since then. It can equally legitimately be countered by the applicant that her employment with another institution since 1991 is not voluntary but a forced one and she, given a chance, is willing to return to her parent job, as the later employment is forced one and she has been employed for much lesser emoluments to which she was entitled to, had she been allowed to join and continued in service with the respondent she is entitled to be compensated for loss suffered by her. This dispute is a post award independent dispute and needs independent investigation into facts in appropriate proceedings.

8. However, until Oct. 91 there cannot be any doubt that the applicant was entitled to the salaries from 23.6.86 to 28.2.90 as arrears of salary during which the services stood terminated and from 28.2.90 for each succeeding months she was entitled to regular salary as a reinstated employee of the respondents when she sought to present herself on duty but she was not taken on duty, though respondents were under an obligation to do so, whether they took service from her or not. This liability cannot be derived on any ground until she was employed elsewhere and her continuance in service from that date may be a legitimate bone of contention as noticed above between the parties.

9. Since the amount payable for the aforesaid period has been deposited with this Court and for which, as noticed by us, the applicant is entitled to, it is justified that the amount deposited by the respondents towards their undoubted liability for payment of salary to applicant for undisputed period be paid to the applicant. Under the orders dated 10.3.99 in C.A. No. 1620/99 referred to above, the Court has already released a sum of Rs. 25000/- out of the aforesaid sum in favour of the applicant. We therefore direct that the remaining amount may be paid to the applicant along with interest accrued thereon from the fixed deposit receipts maintained by the Registrar of this Court.

10. We are further of the opinion that this dispute concerns the execution of award by the Primary Education

Tribunal. This Court in G.R. Bhatt's case (supra) has taken the view that the tribunal has necessary powers to enforce its decisions by executing its orders for which the procedure provided under the Code of Civil Procedure for execution of the decrees is applicable. With this premise the court further held following decision of the Supreme Court in The Alahar Co-operative Credit Service Society v. Sham Lal, 1995(2) G.L.H. 550, that "contempt proceedings are not intended to be a substitute of the execution process and, therefore, care should be taken before entertaining the contempt petition to examine the maintainability of such action", that is to say, the maintainability of execution proceedings. As this Court has found that execution proceedings before the tribunal are maintainable and provisions of Civil Procedure Code relevant thereto apply, this Court would not ordinarily entertain the applications for taking action under Contempt of Courts Act for punishing the respondents for the purpose of seeking compliance of a decision of the tribunal which would otherwise be enforced by having recourse to execution proceedings before the tribunal itself.

11. Keeping in view that the applicant gets all emoluments due upto Oct. 91 and the matter of employment since Nov. 91 and entitlement of the applicant to receive any further payment from the respondents raises a bona fide triable issue between the parties independently, for which the applicant may approach the tribunal, if so advised, we are not inclined to proceed with this contempt petition any further.

12. However, we make it clear that if it is found that the applicant was employed and was drawing full salary in the pay-scale of Rs. 1200-2040, there would be no room for giving advantage of payment from two employers under the guise of executing the order.

13. With the aforesaid directions and observations, this contempt petition stands disposed of. Notice discharged.

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